

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MICHEAL D. JOHNSON, §  
§  
Plaintiff, §  
§  
VS. § CIVIL ACTION NO. SA-23-CV-229-FB  
§  
GARY L. STEEL, JUDGE, 274TH DISTRICT §  
COURT, COMAL COUNTY; FRANCISCO §  
A. ARGENAL, DEPUTY SHERIFF, COMAL §  
COUNTY; and BRADLEY D. GRAHAM, §  
DEPUTY SHERIFF, COMAL COUNTY, §  
§  
Defendants. §

**ORDER ACCEPTING REPORT AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

The Court has considered the Report and Recommendation of United States Magistrate Judge filed in the above-captioned cause on October 2, 2023 (docket #16). According to the CM/ECF system, the Report and Recommendation was mailed to the Plaintiff on October 3, 2023, and the United States Postal Service tracking system indicates delivery to the Plaintiff on October 11, 2023, at 1:48 p.m. To date, the docket sheet reflects no objections to the Report and Recommendation have been received.<sup>1</sup>

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall

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<sup>1</sup> Any party who desires to object to a Magistrate's findings and recommendations must serve and file his, her or its written objections within fourteen days after being served with a copy of the findings and recommendation. 28 U.S.C. § 635(b)(1). If service upon a party is made by mailing a copy to the party's last known address, "service is complete upon mailing." FED. R. CIV. P. 5(b)(2)(C). If service is made by electronic means, "service is complete upon transmission." *Id.* at (E). When the mode of service is by electronic means, three days are no longer added to the time period to act after being served. *See Heverling v. McNeil Consumer Pharmaceuticals, Co.*, Civil Action No. 1:17-CV-1433, 2018 WL 1293304 at \*2 n.3 (M.D. Pa. Mar. 13, 2018) ("On April 28, 2016, the Supreme Court adopted changes to the Federal Rules of Civil Procedure. In pertinent part, the Court amended Rule 6(d) to remove 'electronic means' as a mode of service triggering an additional three days to act when a responsive period commences upon service. *See* FED. R. CIV. P. 6, advisory committee's note to 2016 amendment. The amendments took effect on December 1, 2016.").

make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court has reviewed the Report and finds its reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989). The Recommendation shall therefore be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Defendant Comal County's 12(b)(6) Motion to Dismiss (docket #5) and Judge Steel's Motion to Dismiss (docket #6) should be GRANTED and Plaintiff's Complaint should be DISMISSED for failure to state a claim on which relief may be granted and for lack of subject matter jurisdiction.

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge filed in this cause on October 2, 2023 (docket #16), is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Defendant Comal County's 12(b)(6) Motion to Dismiss (docket #5) and Judge Steel's Motion to Dismiss (docket #6) are GRANTED and Plaintiff's Complaint is DISMISSED WITH PREJUDICE for failure to state a claim on which relief may be granted and for lack of subject matter jurisdiction. IT IS FURTHER ORDERED that motions pending, if any, are also **DISMISSED**, and this case is **CLOSED**.

It is so ORDERED.

SIGNED this 31st day of October, 2023.



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FRED BIERY  
UNITED STATES DISTRICT JUDGE